

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

FEBRUARY 13, 1996

NOTICE

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62(1), STATS.

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 95-2899-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

CHRISTOPHER J. PRICE,

Defendant-Appellant.

APPEAL from a judgment of the circuit court for Outagamie County: HAROLD V. FROEHLICH, Judge. *Affirmed.*

CANE, P.J. Christopher Price appeals a judgment convicting him of disorderly conduct while possessing a dangerous weapon. The sole issue on appeal is whether Price voluntarily waived his right to be represented by counsel at trial. Price argues that although he was not indigent, the trial court failed to make a proper inquiry to determine whether his decision to proceed without counsel was made knowingly and voluntarily. The conviction is affirmed.

Price appeared before the Outagamie County court commissioner for his initial appearance in response to the State's criminal complaint charging him with disorderly conduct with a dangerous weapon. The commissioner

informed Price of the charge and penalty associated with the crime and further informed him of his right to an attorney. The commissioner also asked Price if he would like additional time to talk with an attorney. When Price declined this offer, the commissioner informed him that he could seek the assistance of the public defender's office and again offered him additional time to talk with an attorney. Price again refused the offer and pled not guilty with the understanding that he would be representing himself at the scheduled status conference and jury trial. After failing to appear for the scheduled status conference, Price appeared before Judge Harold Froehlich and informed the court that he was representing himself and wanted to get the matter resolved. The court continued the matter for a jury trial.

Approximately six weeks before trial, Price wrote a letter to the district attorney indicating that he was representing himself because the public defender declared him ineligible for appointed counsel. In this letter, he also made an extensive discovery demand. Price appeared at the jury trial without an attorney where Reserve Judge Nick Schaefer explained the court procedures to Price. Price never asked for an attorney or an adjournment to have his attorney present. The jury found him guilty of disorderly conduct with a dangerous weapon.

In Price's post-trial motions to Judge Froehlich, Price asserted that because the court failed to make a proper inquiry, he never intelligently waived his constitutional right to proceed at trial with an attorney and thus should have a new trial. Notably, Price does not argue that he did not possess minimal competence necessary to conduct his own defense, such as any physical or psychological disability that may significantly affect his ability to communicate a possible defense to the jury. In a written decision, Judge Froehlich denied the motion.

The right to legal assistance in state criminal prosecutions is guaranteed by art. I, § 7, of the Wisconsin Constitution and the Sixth and Fourteenth Amendments to the United States Constitution. *Spencer v. State*, 85 Wis.2d 565, 570, 271 N.W.2d 25, 28 (1978). The determination whether there has been an intelligent waiver of the right to counsel must depend, in each case, upon the particular facts and circumstances surrounding that case, including the background, experience and conduct of the accused. *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938). In ascertaining whether the accused is voluntarily

proceeding without counsel, the trial judge should examine him or her regarding "the nature of the charges, the statutory offenses included within them, the range of allowable punishments thereunder, possible defenses to the charges ... and all other facts essential to a broad understanding of the whole matter." *Pickens v. State*, 96 Wis.2d 549, 562, 292 N.W.2d 601, 608 (1980). The accused should be "aware of the dangers and disadvantages of self-representation." *Id.* at 563, 292 N.W.2d at 608.

A review of the record demonstrates that Price's statements and actions were consistent with a knowing and voluntary election to proceed at trial without an attorney. At his initial appearance, the commissioner informed Price that he had a right to an attorney and that the public defender would appoint one for him if he qualified. He was also offered the opportunity to adjourn the initial appearance in order to discuss this matter with a public defender. Price declined this offer to adjourn the matter twice, pleaded not guilty and demanded a jury trial. Additionally, not only did Price receive a copy of the criminal complaint stating the charge, probable cause and maximum penalty, the commissioner again informed Price of the charge and its maximum penalty.

It is also apparent from Price's letter to the district attorney demanding discovery that he deliberately elected to represent himself knowing the complexities of the legal system and after he had discussed the appointment of counsel with a public defender who advised him that he was ineligible for appointed counsel. At no time does the record ever reflect Price asking the trial court to appoint counsel for him or Price indicating that he was unable to represent himself at the jury trial.

Before trial, the court advised Price on the court procedures, and it is evident from the record that Price was aware of the difficulties and disadvantages of self-representation. It is also evident that Price deliberately elected not to hire an attorney and voluntarily proceeded to trial without counsel. This court is satisfied that the combination of Price's decision before the court commissioner to proceed without counsel, his subsequent course of conduct where he repeated his election to represent himself before Judge Froehlich and in his discovery demand and his deliberate participation in the jury trial without retaining counsel constituted a knowing and voluntary waiver of counsel at trial. Therefore, the conviction is affirmed.

By the Court. — Judgment affirmed.

This opinion will not be published. RULE 809.23(1)(b)4, STATS.